IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 115 of 1995

in

SPECIAL CIVIL APPLICATION No 1843 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

R N DAVE

Appearance:

MR RC KODEKAR for Appellants

MR YN RAVANI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 04/05/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. By means of filing this appeal under clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated December 10, 1993 rendered by the learned Single Judge in Special Civil Application No. 1843 of 1988 by which the appellants are directed to treat the services of the respondent No.1 as qualified service for the purpose of pension and pay pension and other retirement benefits due and payable to him within 12 weeks from the date of receipt of the writ.

2. The respondent No.1 was appointed as a temporary full time Organiser at Sanskar Kendra, Viramgam by order No.GRD 2710/33 dated January 12, 1951. His consolidated pay per month inclusive of all allowances was Rs.60/which was increased by Rs.20/- with effect from April 1, 1967 and ultimately to Rs.100/- per month. The consolidated pay system was revised by the Government vide Resolution dated January 3, 1978 and from consolidated pay of Rs.100/- per month, the respondent No.1 was put in the pay scale of Rs.260-6-308-EB-5-326-B-350 with effect from January 1, 1976. The date of birth of the respondent No.1 is August 5, 1919 and therefore he would have retired from service on attaining age of superannuation on August 4, 1977. However, looking to the satisfactory service rendered by the respondent No.1, his services were further continued upto to June 30, 1978 by an order dated April 10, 1978. Accordingly the petitioner served Sanskar Kendra, Viramgam upto June 30, 1978 and thereafter retired from service. The respondent No.1 did not receive pensionary benefits and, therefore, approached office of Prohibition and Excise Department for getting the said benefits. The office of the Prohibition and Excise Superintendent, Ahmedabad, prepared pension papers of the respondent No.1 and forwarded the same to the Accountant General, Ahmedabad, vide letter dated August 20, 1987 for necessary action. On receipt of the proposal, certain particulars were called for by the Accountant General, Ahmedabad from the office of the Prohibition and Excise Superintendent, which were supplied by the said office vide letter dated November 6, 1987. Thereafter some correspondence ensued between the office of the Prohibition and Excise Superintendent, Ahmedabad and the Accountant General (Accounts & Entitlements), Gujarat, Ahmedabad, but no decision was taken regarding sanction of pension to the respondent No.1. Under the circumstances, the respondent No.1 filed Special Civil Application No. 1843 of 1988

and prayed the Court to issue a writ of mandamus or any other appropriate writ or order directing the original respondents to decide his pension case. The respondent No.1 also prayed to direct the original respondents to immediately pay pension to him and gratuity for the period from April 1, 1951 to August 4, 1977. A reply affidavit was filed by Mr. V.J. Dave, Superintendent of Prohibition and Excise, Ahmedabad, controverting the averments made in the petition. What was claimed in the reply was that the respondent No.1 was paid salary from the contingency fund and as the period during which the respondent No.1 had received salary from contingency fund was liable to be excluded for pensionary benefits, he was not entitled to pension in view of the provisions of Rule 41 (1) (b) of Revised Pension Rules, 1950. It was also stated in the reply that the respondent No.1 was granted time scale of Rs.260-350 from January 1, 1976 and as he had not put in qualifying service, the petition should be dismissed.

3. The learned Single Judge construed Rule 9 (13-A) of the Bombay Civil Services Rules ('BCSR' for short hereinafter) and held that all funds including the contingency fund come to the Government Treasury from the Consolidated Funds and the salary payable to the Government servants out of Consolidated Funds, may be time scale or fixed, even if paid out of contingency funds falls within the meaning of Rule 9 (13-A) of the BCSR. After referring to Rule 42-A of the Revised Pension Rules, 1950, the learned Single Judge further deduced that an employee who retired on or after April 1, 1966 is entitled to the pensionary benefits and as the respondent No.1 had rendered 27 years of continuous service, he was entitled to the pensionary benefits as per the Revised Pension Rules. In view of the above referred to conclusions, the learned Single Judge has allowed the petition filed by the respondent No.1 giving rise to the present appeal.

4. Mr. R.C. Kodekar, learned counsel for the appellants, submitted that the respondent No.1 had not rendered qualifying service and was, therefore, not entitled to pensionary benefits. It was pleaded that the respondent No.1 was paid salary from contingency fund and as per the provisions of the Revised Pension Rules, the service during which the respondent No.1 was paid salary from the contingency fund could not have been treated as pensionable service so as to entitle him to pensionary benefits. What was stressed was that the period from April 1, 1951 to December 31, 1975 could not have been treated as qualifying service and therefore the petition

ought to have been dismissed by the learned Single Judge.

5. Mr. Y.N. Ravani, learned counsel for the respondent No.1, submitted that from April 1, 1967 the salary paid to the respondent No.1 was debited to Pay of Establishment head and not to contingency head and therefore the qualifying service should be reckoned from April 1, 1967 and not from January 1, 1976 on which date time scale was granted to the respondent No.1. According to the learned counsel for the respondent No.1, the respondent No.1 had put in 10 years of qualifying service as provided in Revised Pension Rules, 1950, and therefore the direction issued by the learned Single Judge should be upheld by the Court.

6. We have heard the learned counsel for the parties and considered documents forming part of the petition as well as the provisions of the BCSR and Revised Pension Rules, 1950. The contention that the respondent No.1 had not put in qualifying service for pension has no merits and cannot be accepted. Annexure 'L' to the petition is Government Resolution dated June 20, 1967, granting revision of pay to Organisers of Full-Time Sanskar Kendras. It inter alia provided that pay to the post of Organisers of the full time Sanskar Kendras run by the Prohibition and Excise Department should be revised as mentioned therein with effect from April 1, 1967 and should be debited to the budget head "Demand No.(34) 10 -State Excise duties, A.2 Prohibition Activities. It further provided that the expenditures should be met from the grants, sanctioned thereunder during the current financial year. On inquiry being made by the Court, the learned A.G.P. has informed the Court that Annexure 'L' indicates that the respondent No.1 was paid salary with effect from April 1, 1967 under the head "Pay of Establishment" and not from contingency fund. Therefore, the relevant date for deciding the question whether the respondent No.1 has put in qualifying service would be April 1, 1967 and not January 1, 1976 as is contended on behalf of the appellants. It is an admitted position that the respondent No.1 had retired from service on June 30, 1978. Rule 6 of the Revised Pension Rules, 1950 provides that the amount of superannuation invalid and compensation gratuity and pension will be the appropriate amount set out in the Annexure. Accompaniment to Appendix XIV-C indicates that an employee who has completed 9 years of service is not entitled to pension but is entitled to gratuity. In this case the respondent No.1 had put in qualifying service of ten years so as to be entitled to the pension because from April 1, 1967 he was being paid salary under the head " Pay of

Establishment" and not from contingency fund from that date. Rule 41 of the Revised Pension Rules inter alia provides that qualifying service means and includes in the case of Government servants retiring on or after October 1, 1961, the period of continuous duty whether on permanent or temporary post followed by confirmation of any permanent post but excluding the period of service for which payment is made from contingency fund. The record of the case does not indicate that after April 1, 1967 the respondent No.1 was paid salary from contingency fund. Under the circumstances, period from April 1, 1967 to the date of retirement of the respondent No.1 will have to be treated as qualifying service and therefore in our view, the respondent No.1 is entitled to pensionary benefits.

7. We may also mention that Rule 42-A of the Revised Pension Rules provides that in respect of all classes of Government servants retiring on or after April 1, 1966 services excluding boy service rendered from the date of entry in the service qualifies for pension. Having regard to the different provisions of the Revised Pension Rules of 1950 we are of the opinion that the learned Single Judge was justified in holding that the respondent No.1 was entitled to pensionary benefits. The result of the foregoing discussion is that there is no merits in the appeal and the appeal will have to be dismissed.

8. The learned counsel for the appellants, on instructions of the officers who are present in Court, makes a statement at the bar that pursuant to the directions given by the High Court the appellants have deposited a sum of Rs.97,415/- and as the appellants have deposited the said amount under the Security Deposit Head No. 8674, the said amount may be directed to be refunded with interest accrued thereon to the appellants. The learned counsel further states that the appellants shall calculate the amount of pension payable to the respondent No.1 and pay the same to the respondent No.1 within eight weeks from today. Having regard to the facts of the case, the office is directed to refund the sum of Rs.97,415/- with interest accrued thereon to the appellants after due verification. The appellants are directed to calculate the amount of pension payable to the respondent No.1 and pay the same to the respondent No.1 within eight weeks from today with interest at the rate of 6% from the date of retirement of the respondent No.1 till the payment of the same. The learned counsel for the appellants, on instructions, has stated at the bar that the amount of gratuity payable to the respondent No.1 has been paid to the respondent No.1 and therefore

it is not necessary to give any direction to the appellants regarding payment of gratuity to the respondents.

9. Subject to the foregoing discussions, the appeal fails and is dismissed. There shall be no order as to costs.

(J.M. Panchal, J.)

4.5.2000. (A.M. Kapadia, J.)

(karan)